IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12390 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KARSANBHAI DANABHAI BAGDA

Appearance:

1. Special Civil Application No. 12390 of 2002

MS ROOPAL R PATEL for Petitioner No. 1

MR MAULIK J SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/12/2003

ORAL JUDGEMENT

#. Heard learned advocate Ms. Rupal Patel for the petitioner and Mr. Patel for Mr. Shelat for the

respondent workman. In this petition, the petitioner GSRTC has challenged the award made by the labour court, Rajkot in Reference No. 328 of 1998 dated 23rd July, 2002 wherein the labour court has set aside the order of dismissal and has also granted the relief of reinstatement with continuity of service without back wages for the intervening period. Under the said award, while granting the relief of reinstatement without back wages for the intervening period, the labour court has also imposed the punishment of stoppage of three annual increments with cumulative effect. This petition was admitted by this court by issuing rule thereon by order dated 24.12.2002. While issuing rule, this court issued notice as to interim relief returnable on 17.1.2003 and granted the ad.interim relief in terms of para 7(B) of the petition till next date and thereafter, subsequently, such ad.interim relief granted by this court while issuing notice as to interim relief was made subject to compliance of the provisions of section 17-B of the ID Act, 1947.

#. During the course of hearing, learned advocate Ms. Patel has read before this court entire findings given by the inquiry officer from page 8 to page 14 wherein the charges levelled against the workman have been found to be proved against the workman. Notice was issued to the workman to show cause as to why he should not be dismissed from service. She submitted that looking to the findings recorded by the inquiry officer, who has discussed the entire evidence, both oral and documentary, and after considering the entire evidence, has rightly come to the conclusion that the charges levelled against the workman are found to be proved. She also placed reliance on the past record wherein 19 defaults have been noted from page 15 to page 17 and thereafter, she read the award in question from para 6 to the final order, from page 22 to 30. It was her submission that the labour court is having no jurisdiction to reappreciate the evidence which was led in the departmental inquiry. She also submitted that the inquiry officer can believe the statement of passenger or any person, according to his discretionary powers. She also submitted that looking to the past record of the respondent workman, the labour court has committed error in granting reinstatement in favour of the workman as once he was dismissed out of the nineteen defaults as narrated in the past record. She also submitted that there two groups of eight passengers; one group of eight passengers escaped from the control of the checking inspector and that was due to the conductor. Therefore, in all, according to her submission, sixteen passengers

were found without tickets. According to her submission, the passengers were travelling from Haripar to Lalpar and meanwhile the bus was checked by the checking staff at Lalpur Jakat Naka which was at the distance of 6 km and it was an Express Bus. Therefore, in short, it was her submission that the labour court ought not to have granted the reinstatement in exercise of the powers under section 11A of the ID Act, 1947. Save and except these submissions, no other submissions were made by Ms. Patel on behalf of the petitioner Corporation.

#. On the other hand, on behalf of the respondent workman, it has been submitted by Mr. B.R.Patel, learned advocate appearing for Mr. Shelat that the labour court is having power and jurisdiction to reappreciate the evidence while exercising the powers under section 11-A of the Industrial Disputes Act, 1947. It was his submission that the labour court was justified and was right in reappreciating the evidence led in the departmental inquiry and was also right in coming to its own conclusion while deferring to the findings recorded by the inquiry officer. He also submitted that according to the labour court, the charges levelled against the workman were not proved on the basis of the record and, therefore, the labour court was right in granting reinstatement without back wages for the intervening period. According to his submission, denial of back wages for intervening period of about five years plus punishment of stoppage of three annual increments with cumulative effect is sufficient punishment. He also submits that there is no error apparent on the face of the record and, therefore, no interference is required in this petition under Article 227 of the Constitution of India.

#. I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question and simultaneously, read the findings, past record. The labour court has examined the oral evidence of the driver, passenger and the reporter from para 6 of the award. After examining the oral evidence led in the departmental inquiry, the labour court has come to the conclusion that no charge as alleged has been established against the workman and, therefore, there was no sufficient evidence against the workman and the findings given by the inquiry officer are baseless and perverse in nature.The labour court has also considered that the bus was checked within six km distance and it was an Express Bus wherein, according to the ST Rules, Road Booking was permissible. The labour court has also considered that 40 passengers were found

with tickets when the bus started from Jamnagar. Distance from Jamnagar to Lalpur Jakat Naka is of 8 to 9 km and from Haripar to Lalpur, distance is only six km. So, when the bus was checked by the checking squad, at that time, the conductor was doing the road booking and no fare was collected and the tickets were not issued to all the passengers. These were the clear statements of the passengers made at the departmental inquiry which was relied upon by the labour court, about the alleged misbehaviour of the respondent workman. The labour court considered that there was no evidence of the driver, conductor and the passenger and reporter which cannot establish that there was misbehaviour or misconduct on the part of the workman as alleged. The labour court also observed that as regards alleged misbehaviour of the respondent workman, no police complaint was filed by the reporter. After appreciating that, I am of the view that the labour court was right in coming to the conclusion that the charge of misbehaviour has not been proved against the workman as alleged. I am also of the opinion that the labour court was right in concluding that the charge of collecting fare and not issuing tickets has also not been proved against the workman as alleged. As regards eight passengers of the other group who escaped from the control of the checking staff in the report at the time of checking, how many passengers were there, the reporter has noted 40 plus eight without tickets and other eight passengers which comes to sixteen. But in report, only 40 plus eight persons found without ticket noted, not 16 passengers are noted. Therefore, such story of other group of passengers not correct. Therefore, when the bus was checked only at the distance of 6 km, at that time, road booking was going on and it is also required to be noted that during the period of six km, in an Express Buswhere the road booking is permissible, the conductor had issued tickets to 40 passengers and in that view of the matter, presumption or inference against the conductor without any cogent evidence is totally unwarranted. At the time of checking, way bill was open and it is not the case of the corporation that the way bill was closed by the conductor. The fact that the way bill was open would go to show that the conductor has yet to issue the tickets to the passengers. It is also required to be noted that his traffic cash was not checked by the checking staff, for the reasons known to the reporter as to why it was not possible. I am of the view that when the checking staff checked the bus, then, it was his duty to see that sufficient evidence is collected against the workman when specific irregularities were found on the spot.Once when the checking staff has been alleging against the workman

that he collected fares without issuing tickets, then, in view of such allegation, traffic cash ought to have been checked by the checking staff because traffic cash is an important piece of evidence. In view of the allegation of collection of fares without issuance of tickets to the passengers, checking of the traffic cash would assume much importance because it would have cleared the picture as to whether the cash was in excess or not but that has not been done for the reasons known to the checking staff. According to my opinion, this is the serious lapse on the part of the checking staff in not checking the traffic cash of the workman conductor. In short, from para 6 onward, cogent reasons and clear findings have been given by the labour court after appreciating the evidence on record that in departmental inquiry, charges are not proved against the conductor based on the record and I am of the opinion that in doing so, no error whatsoever has been committed by the labour court. The labour court has also reappreciated the evidence of the reporter in respect of the alleged misbehaviour of the conductor. The labour court has appreciated the answers given by the reporter that the conductor permitted to sign the way bill, T4 and obtained unpunched tickets from the conductor and in view of such clear answers given by the reporter, if the allegations of alleged misbehaviour were correct, then, these would not have been the answers, he would not have permitted to sign the way bill, T4 and the unpunched tickets. According to my opinion, such an evidence of the reporter himself was enough to disbelieve the allegations of misbehaviour against the checking staff. In view of such evidence, according to my opinion, the labour court was right in drawing inference in favour of the workman that there was no misbehaviour or misconduct as alleged by the checking staff. Therefore, according to my opinion, the findings given by the labour court that the charges are not proved against the conductor on the basis of the evidence led in the departmental inquiry is legal, valid and just findings recorded by the labour court which would not call for any interference in this petition under Art.227 of the Constitution of India.

#. The decision in the matter of The Workmen of M/S FIRESTONE TYRE AND RUBBER CO OF INDIA PVT LTD V. THE MANAGEMENT AND OTHERS reported in AIR 1973 SC 1227 is the answer to the contention raised by the learned advocate Ms. Roopal Patel that the labour court cannot reappreciate the evidence led in the departmental inquiry. In the said matter of the Workmen of M/s. Firestone (supra), this aspect has been examined by the apex court. In para 36 and 37 of the said judgment, it

has been observed by the apex court as under:

"36. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11A about the guilt or otherwise of the workman concerned, is that of the tribunal. It has to consider the evidence and come to a conclusion ne way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

37. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found is such that it does not warrant dismissal or discharge. The tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself, is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A."

#. The aforesaid observations made by the apex court in the matter of Workmen of M/S FIRESTONE TYRE AND RUBBER CO OF INDIA PVT LTD V. THE MANAGEMENT AND OTHERS reported in AIR 1973 SC 1227 makes it clear that the labour court or the industrial tribunal as the case may be, can reappreciate the evidence led in the departmental enquiry; it can defer the findings given by the inquiry officer and can come to its own conclusions while exercising the powers under section 11A of the ID Act. Looking to the facts of this case, in this case, the labour court was right in reappreciating the evidence led in the departmental inquiry and in coming to the conclusion that the charges levelled against the workman were not proved against the workman. After appreciating the evidence led in the departmental inquiry, the labour court has come to its own conclusions and I am of the view that in doing so, the labour court has not committed any jurisdictional error and, therefore, I am of the opinion that the labour court was right in exercising the powers under section 11A of the ID Act, 1947.

#. As regards the contention raised by Ms. Patel that in views of the past record of the workman wherein 19 defaults were committed by him which includes one dismissal and for that, the labour court has not imposed any punishment upon the concerned conductor, I have considered the past record of the workman. The workman was dismissed from service on 11thJuly,1997 and the award of reinstatement has been made by the labour court on 23rd July, 2002. Thus, after about five years, award of reinstatement without back wages for the intervening period has been made by the labour court. While making such an award of reinstatement without back wages, the labour court has also imposed punishment of stoppage of three annual increments with cumulative effect considering the past record of the workman. Normally when the labour court comes to the conclusion that the charges are not established and the workman is entitled for reinstatement, then, in such circumstances, reinstatement with back wages for the intervening period is the normal relief. However, in this case, the labour court deviated from that path and denied the back wages and also imposed the aforesaid punishment. This shows that the labour court has applied its mind to the facts of the case, to the past record of the workman I am, therefore, of the opinion that two punishments have been imposed by the labour court, one is the denial of back wages for the intervening period and the second one is the stoppage of three annual increments with cumulative effect which is enough and sufficient punishment. This

aspect has been examined by the apex court in the matter of Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC 976 wherein it has been held that where the tribunal while directing reinstatement withheld payment of half of the back wages keeping in view the proved misconduct of the employee, withholding of half of the back wages in the nature of penalty, in such a case, it could not be said that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty. In para 3 of the said judgment, it has been observed by the apex court as under:

> "3. While discretion is vested in the Tribunal under this provision and in a given case on the facts established the tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages.In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld, it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty."

#. Looking to the facs on record as they were, the respondent conductor was on route from Jamnagar to Porbandar and he was working at the Jamnagar Depot.The date of incident is 19th July, 1996. The bus was checked at Lalpur Jakat Naka. The distance from Jamnagar to Lalpur Jakat Naka is about 8 to 9 km and from Harpar to Lalpar Jakat Naka is less than 6 km. At the time of checking in the bus, as per the report of the reporter, 40 passengers were admittedly found with the tickets and 8 passengers were found without tickets. The bus in question was an Ex press Bus. It is an undisputed fact that as per the ST Rules, road booking is permissible in

an Express Bus upto 6 km. Therefore, the bus started from Jamnagar in road booking and upto the checking point, just 7 to 8 kms distance was crossed, the workman had already issued tickets to 40 passengers and only this group remained without tickets. Thus, within the distance of about 7 to 8 km from the point where the bus had started, the workman had already issued tickets to 40 passengers. This shows bona fide conduct on the part of the respondent workman. At the time when the bus was checked, the way bill was admittedly open which means that the booking was not completed. Before the inquiry officer, reporter was examined. The reporter admitted that at police station, no complaint was filed against the conductor in respect of his alleged misbehaviour with the checking staff. The ST Cash was also not checked at that point of time and necessary remarks were made in the Way Bill. Unpunched tickets were admittedly obtained from the conductor and T4 Column was also filled up by the reporter. That means the allegations made against the conductor that he was not allowing to complete the checking procedure is apparently not correct. The driver Mr. R.M. Gohil was examined before the Inquiry Officer. One passenger was examined as a witness for the conductor. The conductor had produced his defence statement. Inquiry officer has not believed the oral evidence of the passenger and the driver of the bus in question which was led before him but he considered and relied only upon the statements obtained by the checking staff on the spot. Initial statements explained by the passenger and the driver before the inquiry officer had remained without cross examination. Therefore, the labour court has rightly decided that the findings given by the inquiry officer are baseless and perverse because initial spot statements of the driver and the passenger cannot be considered to be a legal evidence. For not believing the oral evidence of the driver and the passenger led during the course of inquiry, the inquiry officer has not given any detailed and cogent reasons and, therefore, in view of that, the labour court was right in coming to the conclusion that the charges levelled against the workman are not proved and the findings given by the inquiry officer are baseless and perverse. As regards the past record, only two offences were that the fare was collected. Except that, in 10 misconduct in past, no fare was collected and rest all five offences are very minor in nature looking to the punishment imposed by the department. It is a normal principle that once the charge is not proved against the employee, then, such an employee is entitled for full back wages for the intervening period as a matter of right unless the exceptional circumstances are pointed

out by the employer. Inspite of that fact, the labour court has applied its mind properly and has also considered the past record, one dismissal and has therefore not granted the amount of back wages for the intervening period of five years and also imposed major punishment of stoppage of three annual increments with cumulative effect having continuous and recurring effect till the date of retirement of the respondent workman. Therefore, according to my opinion, the labour court has properly appreciated the evidence on record and has rightly come to the conclusion which is based on the appreciation of the legal evidence. Therefore, the findings of the labour court are not baseless or perverse. The labour court is having such powers under section 11-A of the Industrial Disputes Act, 1947 to reappreciate the evidence, to differ with the findings recorded by the inquiry officer and then to come to its own conclusion. Therefore, no jurisdictional error has been committed by the labour court. Therefore, according to my opinion, the labour court has passed a just, proper and reasonable award which is not causing any unnecessary burden upon the corporation as regards back wages which is ultimately a burden upon the public exchequer.

#. Therefore, considering the facts and circumstances of the case and also considering the aforesaid two decisions of the apex court, and considering the punishment imposed by the labour court while denying total back wages for a period of about five years, according to my opinion, the labour court was right in denying back wages for the intervening period; it was right in imposing punishment of stoppage of three annual increments with cumulative effect while making the award of reinstatement with continuity of service. According to my opinion, such an award made by the labour court is just, proper and valid award which would require no interference in this petition under Article 227 of the Constitution as Ms. Patel has not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court while making such an award. The award made by the labour court is based on the evidence on record. Therefore, I am of the opinion that the labour court has not committed any error while passing an award. This Court is having very limited jurisdiction while exercising the powers under Article 227 of the Constitution of India. This aspect has been examined by the apex court in the matter of Syed TA Naqshbandi and others versus State of Jammu & Kashmir & Ors. reported in (2003) 9 SCC 592. Relevant observations made by the apex court in the said judgment

are reproduced as under:

" Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before courts."

#. Therefore, considering the aforesaid decision of the apex court, this court cannot reappreciate the findings given by the labour court as Ms. Patel has not been able to point out that the labour court has committed any procedural irregularity or jurisdictional error. Considering the decision of the apex court in the matter of Workmen of Firestone (Supra), I am of the opinion that the labour court was right in exercising the powers under section 11A of the ID Act in favour of the workman and was also right in reappreciating the evidence led in the departmental inquiry. Considering the decision of the apex court in the matter of Jitendrasinh Rathod (supra), I am of the opinion that the denial of back wages for the intervening period of about five years and punishment of stoppage of three annual increments with cumulative effect could be considered to be the sufficient punishment, considering the facts, circumstances and the reasoning given by the labour court that from eight passengers, no fare was collected by the conductor and no tickets were issued and the road book was going in an Express Bus wherein road booking was permissible as per the Rules of the ST Corporation. This is the sufficient evidence rightly appreciated by the labour court that the traffic cash was not checked by the checking staff and, therefore, according to my opinion, the labour court was right in passing the award of reinstatement without back wages for the intervening period with punishment of stoppage of three annual

increments with cumulative effect. Therefore, there is no substance in this petition and the same is required to be rejected.

##. In the result, this petition is rejected. Rule is discharged. Interim relief shall stand vacated. There shall be no order as to costs.

##. At this stage, learned advocate Mr. Patel appearing for Mr. Shelat for the workman requests that some suitable directions may be issued to the petitioner to implement the award of the labour court as confirmed by this court within some reasonable period. The request made by Mr. Patel for the petitioner was strongly objected by the learned advocate Ms. Roopal Patel on the ground that such directions cannot be issued to the petitioner in its own petition. I have considered the submissions made by the learned advocates for the parties. It is necessary to be noted that the award in question dated 23rd July, 2002 was challenged by the petitioner before this Court in December, 2002, after about five months and yet the award in question was not implemented by the petitioner. Thereafter, the a ward remained stayed before this court. Considering the fact that the workman is out of service since 1997 I am of the opinion that some directions are required to be issued to the petitioner for implementing the award in question in letter and spirit within some reasonable period.

##. Therefore, petitioner is directed to reinstate the respondent as per the impugned award dated 23.7.2002 within one month from the date of receipt of copy of this order and to pay full wages to the respondent workman from the date of the award i.e. 23.7.2002 till the date of his actual reinstatement within two months from the date of receipt of copy of this order. While paying full wages for the period from the date of the a ward till the date of his actual reinstatement, it will be open for the petitioner to adjust the amount, if any, paid by it to the workman under section 17B of the ID Act, 1947.

Dt.15.12.2003. (H.K. Rathod,J.)
Vyas